

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

SUBCHAPTER C. LICENSES, GENERALLY

43 TAC §215.85

The Texas Department of Motor Vehicles (department) adopts amendments to Chapter 215, Motor Vehicle Distribution, Subchapter C, Licenses, Generally, §215.85, Brokering, Used Motor Vehicles, with changes to the proposed text as published in the June 29, 2018, issue of the *Texas Register* (43 TexReg 4442). The rule will be republished.

EXPLANATION OF AMENDMENTS

The purpose of the amendments is to clarify how a licensed dealer holding only a General Distinguishing Number (GDN) pursuant to Transportation Code, §503.029(a)(6)(B), may pay a referral fee.

Amendments add new subsection (d) to provide that a licensed dealer holding only a GDN pursuant to Transportation Code, §503.029(a)(6)(B), may pay a referral fee in cash or value to an individual who has purchased a vehicle from the licensed dealer within the four-year period preceding the referral. The payment of the referral fee may be contingent upon the new referred individual purchasing a vehicle from the license dealer, or a fee may be paid for the referral of a new potential customer.

COMMENTS

The department received comments from Enterprise Holdings, LLC (EAN), Texas Automobile Dealers Association (TADA), Texas Recreational Vehicle Association (TRVA), and Texas Independent Automobile Dealers Association (TIADA).

COMMENT

EAN objects to the adoption of proposed subsection 215.85(e) as written, and believes the rule as adopted will conflict internally, create confusion, and in the case of EAN, interfere with private employer/employee relationships. Accordingly, EAN requests that subsection 215.85(e) as proposed be deleted. Alternatively, EAN requests that the phrase "for a referral relating to a new motor vehicle customer" could be added to the end of proposed subsection (e) to make it clear.

RESPONSE

The department has reviewed the comment and agrees that the proposed new subsection (e) conflicts with subsection (a) of §215.85, and thus, the proposed new subsection (e) will be deleted.

COMMENT

TADA states that the proposed amendment as published in the *Texas Register*, impacts each licensed dealer and as each member holds a GDN and sells both new and used motor vehicles, the proposed rule, if adopted, will affect franchised dealers as each is a "licensed dealer". TADA further states that there are compliance concerns for dealers and confusion for consumers inherent in the current proposal. The purpose for the five-year period for payment of a referral fee is unclear and the use of "new potential customer" who may be cause for the payment of the referral fee to a used vehicle purchaser is not defined. TADA requests

the board not to adopt the proposed rule to 43 TAC §215.85 as it may be in conflict with the Texas Finance Code as well as having the potential to create confusion for consumers and licensees.

RESPONSE

In response to the comment, the department will modify the proposed rule to clarify that the intent of the rule is to apply only to those licensed dealers that hold a GDN issued pursuant to Transportation Code, §503.029(a)(6)(B), as independent motor vehicle dealers. The department disagrees that consumers will be confused, and with the commenter regarding its concerns relating to potential violations of the Texas Finance Code. The department believes that this rule amendment is fully within its statutory authority, and that any action allowed by a department rule cannot authorize any violation of another state statute or federal law.

COMMENT

TRVA provided input regarding recreational vehicle dealers. These dealers are concerned they will be responsible for maintaining records, records which are auditable by the Texas Department of Motor Vehicles and Office of Consumer Credit Commissioner, for five or more years on transactions related to referral fees. If the proposed amendments were to be approved and not be problematic, TRVA concerns center upon those audits by the Office of Consumer Credit Commissioner. The RV industry do not historically pay referral fees even though they may be authorized to do so.

RESPONSE

The department appreciates the commenter's comment. The department has determined that the subsection should be changed to reflect a four-year period to be consistent with records retention requirements.

COMMENT

TIADA commented generally in support of the rule amendment, but noted that subsection (e) of the proposed rule does not appear to add any benefit to the public nor clarify the rule. As noted in response to a previous comment, the department agrees with the comment regarding this reference, and subsection (e) has been removed.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and more specifically, Transportation Code, §503.002 which provides the board may adopt rules for the administration of Chapter 503.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 503.

§215.85. *Brokering, Used Motor Vehicles.*

(a) Transportation Code, §503.021 prohibits a person from engaging in business as a dealer, directly or indirectly, including by consignment without a GDN. Except as provided by this section, "directly or indirectly" includes the practice of arranging or offering to arrange a transaction involving the sale of a used motor vehicle for a fee, commission, or other valuable consideration. A person who is a bona fide employee of a dealer holding a GDN and acts for the dealer is not a broker for the purposes of this section.

(b) A buyer referral service, program, plan, club, or any other entity that accepts a fee for arranging a transaction involving the sale of a used motor vehicle is required to meet the requirements for and obtain a GDN, unless the referral service, program, plan, or club is operated in the following manner.

(1) There is no exclusive market area offered to a dealer by the program. All dealers are allowed to participate in the program on equal terms.

(2) Participation by a dealer in the program is not restricted by conditions, such as limiting the number of line-makes or discrimination by size of dealership or location. The total number of participants in the program may be restricted if the program is offered to all dealers at the same time, with no regard to the line-make.

(3) All participants pay the same fee for participation in the program. The program fee shall be a weekly, monthly, or annual fee, regardless of the size, location, or line-makes sold by the dealer.

(4) A person is not to be charged a fee on a per referral fee basis or any other basis that could be considered a transaction-related fee.

(5) The program does not set or suggest to the dealer any price of a motor vehicle or a trade-in.

(6) The program does not advertise or promote its plan in a manner that implies that the buyer, as a customer of that program, receives a special discounted price that cannot be obtained unless the customer is referred through that program.

(c) All programs must comply with Subchapter H of this chapter (relating to Advertising).

(d) A licensed dealer holding a GDN pursuant to Transportation Code, §503.029(a)(6)(B), may pay a referral fee in cash or value to an individual who has purchased a vehicle from the licensed dealer within the four-year period preceding the referral. The fee may be paid contingent upon either the new referred individual:

(1) purchasing a vehicle from the independent motor vehicle dealer; or

(2) the referral of a new potential purchaser.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 217. VEHICLE TITLES AND
REGISTRATION
SUBCHAPTER B. MOTOR VEHICLE
REGISTRATION
43 TAC §217.27

The Texas Department of Motor Vehicles (department) adopts amendments to Chapter 217, Vehicle Titles and Registration, Subchapter B, Motor Vehicle Registration, §217.27, Vehicle Registration Insignia, with changes to the proposed text as published in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2737). The rule will be republished. The changes correct references to obsolete language and improve clarity and consistency.

EXPLANATION OF AMENDMENTS

Amendments to §217.27 clarify requirements and procedures for the approval or denial of personalized license plates, and make the rule consistent with current practice.

The amendments identify the director of the Vehicle Titles and Registration Division, or the director's designee, as the initial decision maker. The amendments clarify that the director may approve or deny an application for a personalized plate, and may cancel a previously issued personalized plate. The amendments identify and clarify the criteria that the director considers in evaluating plate patterns. More specifically, the amendments establish criteria for identifying personalized plates that may be viewed as indecent, vulgar, or derogatory. Criteria are added to identify plates that contain references to gangs, violence, drugs, or the military.

The amendments add an appeal mechanism for rejections and revocation of personalized license plates. A decision of the director may be appealed to the executive director or the executive director's designee within 20 days of cancellation notification or non-issuance. The decision of the executive director or the executive director's designee is final and may not be appealed.

The amendments add that a person whose personalized initial application has been denied may either receive a refund or select a new alpha-numeric pattern. If an existing personalized alpha-numeric pattern has been cancelled, the person may choose a new personalized alpha-numeric pattern which will be valid for the remainder of the term or will forfeit the remaining term purchased.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; and more specifically, Transportation Code, §504.0011, which provides that the board may adopt rules to implement and administer Chapter 504, License Plates.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 504.

§217.27. *Vehicle Registration Insignia.*

(a) On receipt of a complete initial application for registration with the accompanying documents and fees, the department will issue vehicle registration insignia to be displayed on the vehicle for which the registration was issued for the current registration period.

(1) If the vehicle has a windshield, the symbol, tab, or other device prescribed by and issued by the department shall be attached to the inside lower left corner of the vehicle's front windshield in a manner that will not obstruct the vision of the driver.